IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6723 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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Versus

SECRETARY

Appearance:

1. Special Civil Application No. 6723 of 1990

MR RC JANI for Petitioner No. 1

MS KN VALIKARIMWALA for Respondent No. 1

CORAM : MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 12/04/2002

ORAL JUDGEMENT

1. The petitioner has approached this Court under Article 226 of the Constitution of India for issuance of writ of mandamus quashing and setting aside the impugned

order dated 31/8/1990 and to reinstate the petitioner in service and to permit him to work in the school run by the respondent as Peon.

1.1. According to the petitioner he was working as Peon in the school named Zaveri R.T. High School at Kadi run by the respondent - Kadi Kelvani Mandal since 16/8/1978. According to him, while he was in service he discharged his duties honestly, sincerely and to the utmost satisfaction of the management of the school and for his efficient working, the respondent Mandal had even issued a certificate dated 14/9/1987 certifying the fact that he was working in the school for the last 10 years and that he was well experienced in carrying out the works relating to the school and his conduct and behaviour was very good. He has further averred that he was relieved from the service by the respondent management vide order dated 31/8/1990 on the ground that his conduct was not in consonance with the discipline required to be observed by the staff of the school. It appears that earlier he was served with a notice in view of his conduct not befitting a member of staff of the school, but upon tendering written apology, he was permitted to continue in the service. Even subsequently his behaviour did not change and, therefore, an inquiry committee was appointed to look into the problem and the said committee recommended after making due inquiry to afford one more opportunity to the petitioner to continue in service by assigning him some other work. However, the petitioner flatly denied to do any other job and hence, the respondent management, after passing appropriate resolution was constrained to relieve the petitioner with effect from 1/9/1990. The petitioner has, therefore, approached this Court by way of this petition challenging the validity of said order on various grounds set out in the petition.

2. This Court admitted the petition on 5/11/1990 and issued notice as to interim relief. However, the interim relief was ultimately refused by the order of this Court dated 12/11/1990. After the matter was listed for final hearing, this Court was informed that the parties were trying to resolve the issue amicably. On that ground hearing of the petition came to be adjourned several times.

3. Today when the matter is called out Miss Valikarimwala, learned counsel for the respondent makes a

statement that the respondent - management is prepared to take back the petitioner in service on his original post of Peon on the salary which he was drawing at the time when the impugned order came to be passed. She has stated that the petitioner will be made available all other benefits which are being given to other employees like the petitioner in the school. She has further stated that the management is willing to take the petitioner back in service provided petitioner forgoes his claim for back wages. Mr. Kirti Pancholi, learned advocate appearing for Mr. R.C. Jani for the petitioner, states that the petitioner is agreeable to this arrangement. In view of this statement, the grievance of the petitioner no more survives. The petition is, therefore, disposed of with no order as to costs. Rule discharged.

[AKSHAY H. MEHTA, J.]

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